Remarks

Reconsideration of this application is respectfully requested. Claims 114, 115, and 117 have been rejected under 35 U.S.C. §103 as being unpatentable over Fries et al., USPN 6,317,885 in view of McCoy et al., USPP 2005/0125823 (used as a teaching of video-on-demand), and Claim 116 has been rejected as being unpatentable over Fries et al. in view of McCoy et al. and Rainville et al., USPP 2002/0069411 (used as a teaching of a transparent Internet portion.)

To overcome the references, the independent claims have been amended to recite that the protocol file indicates the size and location of a video layer within a markup language layer as disclosed on page 21, lines 1 and 2. The claims also now specify that the video-on-demand is television video-on-demand. Claims 114-117 remain pending.

The only part of Fries et al. that appears to specifically mention links corresponding to a video program, col. 18, lines 6-22, nowhere mentions that the video program is presented within a portion of a markup layer, much less in accordance with the size and location defined by a protocol file, much less still a protocol file that is downloaded in response to selection of a link (Claim 114). Accordingly, the claims are patentable.

The Office Action lists a number of locations in Fries et al. that allegedly teach a protocol file "that contains meta-data and PSI data for displaying the video program corresponding to the selected link." That is incorrect, as a rigorous reading of Fries et al. demonstrates. In each section cited by the examiner to discuss metadata and PSI data, the section has nothing to do with the video link feature mentioned briefly in column 18, but only with conventional web page presentation that forms a large part of the set-top box browser invention of Fries et al. With more specificity:

Col. 2, lines 30-38 discuss injecting video information into TV programming, with the video information representing Web pages, not television VOD as claimed. The meta-data discussed at line 33 thus relates to displaying web pages and only web pages, without any video layers within them. Certainly, no meta-data is said in this section to be downloaded in response to the selection of a link as recited in Claim 114.

Indeed, col. 7, lines 7-52 and col. 8, line 50-col. 11, line 37 make Applicant's point in this regard, because in these sections Fries et al. teaches that the meta-data is read from an API in the STB that evidently is not downloaded "in response to selection of a link", much less a link to a television VOD, but that already resides there. And nowhere do these sections contemplate that anything, much less a "protocol file", indicates a size and location of a video layer in a markup language layer.

Moreover, Applicant's point that the relied-upon meta-data and PSI data are applied by Fries et al. only to conventional web pages is bolstered by col. 19, lines 30-63 and col. 22, line 61-col. 23, line 15 as follows. Col. 19 is explicitly directed to "page Images", line 15; the PSI data is explicitly said to facilitate display of page images, as opposed to television VOD, lines 35-40. Indeed, col. 22, lines 60-65 (titled "Meta-Data") clarify that the meta-data is directed to web page display, and nowhere mentions a video frame within a markup language frame much less defining a size and location of the video frame. Tellingly, ***the only part of Fries et al. that has been relied on as teaching links as best discerned by Applicant, col. 18, lines 6-23, nowhere mentions protocol files, meta-data, or PSI data, much less a protocol file that contains size and location information pertaining to television VOD layers, much less still one that is downloaded in response to selection of a link to a channel*** (Claim 114). Accordingly, the relied-upon portions of Fries et al. militate toward patentability.

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It appears to be the examiner's contention that "the protocol file inherently includ[es] a TV channel", bottom of page 3 of the Office Action. First, to the extent that the meta-data and PSI data have been relied on as the "protocol file", it is simply not the case that they contain information on anything other than the web pages that are injected into the broadcast stream, for reasons discussed above. Second, to be "inherent", a missing element must "necessarily" be in the prior art, MPEP §2112. Here, not only must channel information not be contained in the relied-upon data of Fries et al., it appears in fact that it doesn't appear at all in the relied-upon data.

MPEP §2144.03 advises that the taking of official notice can be taken only of facts that "are capable of instant and unquestionable demonstration as to defy dispute", giving, as examples, adjusting flame intensity as needed for heat and tape recorders automatically erasing old data when new data is recorded onto them. Official notice of dependent claim limitations "might be appropriate" but only if the facts so noticed "are of notorious character".

Accordingly, official notice "is permissible only in some circumstances", and should be "rare" in final rejections. In any case, according to the MPEP official notice is most inappropriate of technical facts in areas of esoteric technology or of specific knowledge of the prior art. Still further, "ordinarily there must be some form of evidence in the record to support an assertion of common knowledge", and "general conclusions concerning what is basic knowledge without specific factual findings will not support an obviousness rejection."

It must be noted in addition that the question is not just whether various elements are well known, but also where the prior art supplies the motivation to combine the allegedly well-known features with the rest of the claimed elements. That is, regardless of how an element is identified in the prior art, i.e., using

a reference or "official notice", the remaining task for an examiner is to show why the prior art suggests the element in the combination claimed.

For each and every taking of official notice, should the rejections be persisted in Applicant hereby requests not only a prior art showing under MPEP §2144.03 but also the requisite prior art suggestion to combine the allegedly well-known feature in the combination being rejected. Applicant explicitly traverses the taking of official notice for failing to comply with the above requirements of the MPEP.

The Examiner is cordially invited to telephone the undersigned at (619) 338-8075 for any reason which would advance the instant application to allowance.

Respectfully submitted,

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